

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC C. GEROLD,
Plaintiff(s),

vs.

NOVORTIS RETALIN,
Defendant(s).

No. C 07-4142 MEJ

**ORDER FOR CLERK OF COURT TO
REASSIGN CASE**

**REPORT & RECOMMENDATION RE:
PLAINTIFF'S APPLICATION TO
PROCEED IN FORMA PAUPERIS**

On August 13, 2007, Plaintiff Eric C. Gerold filed a complaint naming Novortis Retalin as a defendant. On the same day, Plaintiff also filed an Application to Proceed In Forma Pauperis ("IFP"). Plaintiff has not consented the jurisdiction of a United States magistrate jurisdiction pursuant to 28 U.S.C. § 636. Accordingly, this case shall be reassigned to a district court judge with the following report and recommendation.

I. IFP Application

Pursuant to 28 U.S.C. § 1915(a)(1), the Court may permit an individual to file an action in federal court without prepayment of fees when the plaintiff has demonstrated his or her poverty. Here, Plaintiff has submitted an incomplete application. Specifically, in Section 2 of the application, Plaintiff states that he has received money within the past twelve months from the following sources: "Business, Profession, or self employment," and "Federal or State welfare payments, Social

1 Security or other government source". Despite this statement, Plaintiff fails to describe the source of
2 money and does not state the amount received from each source. Accordingly, the undersigned is
3 unable to determine whether Plaintiff has properly demonstrated his poverty, and recommends that
4 the district court order Plaintiff to provide this additional information.

5 **II. Merits of Plaintiff's Complaint**

6 Pursuant to 28 U.S.C. § 1915(e), where a plaintiff seeks to proceed in forma pauperis, the
7 Court must dismiss the complaint if it determines that the complaint is frivolous or malicious, or that
8 the plaintiff has failed to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B).
9 The Court may deny leave to proceed in forma pauperis if it determines at the outset "if it appears
10 from the face of the proposed complaint that the action is frivolous or without merit." *Tripati v.*
11 *First National Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987). In making this determination,
12 the Court assesses the factual and legal basis of the asserted wrong, "however inartfully pleaded," to
13 determine whether a basis for federal jurisdiction exists. *Franklin v. Murphy*, 745 F.2d 1221, 1227-
14 28 (9th Cir. 1984). However, "[a] court may dismiss as frivolous complaints reciting bare legal
15 conclusions with no suggestion of supporting facts, or postulating events and circumstances of a
16 wholly fanciful kind." *Id.* (citing *Taylor v. Gibson*, 529 F.2d 709, 717 (5th Cir. 1976)).

17 Here, Plaintiff's Complaint consists of eight handwritten lines and appears to allege that
18 certain drugs, presumably those manufactured by the defendant, caused him "to think I was the devil
19 or something evil." Plaintiff also states that he was "[h]earing in church things that shouldn't hear
20 frightened me" [sic] and that "[r]eligions ignorance trifled and beguiled my mind from common
21 sense." [sic]. (Doc. #1.) From these allegations, the undersigned is unable to determine the nature
22 of Plaintiff's allegations. Further, Plaintiff's complaint is devoid of facts or allegations establishing
23 causation and harm or any information about the basis for the claim and the Court's jurisdiction. *See*
24 Fed. R. Civ. P. 8(a)(2). Accordingly, the undersigned recommends that Plaintiff's complaint should
25 be dismissed.

26 **III. Leave to Amend**

27 A court should only dismiss a complaint without leave to amend when "the court can rule out
28

any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim." *Lopez v. Smith*, 203 F.3d 1122, 1128 (9th Cir. 2000) (internal quotation omitted). In this case, the undersigned recommends that Plaintiff be given a chance to amend his complaint. The undersigned also recommends that the following instructions be given to Plaintiff:

Any amended complaint should contain a simple statement of why Plaintiff believes the federal court has the power (i.e., the jurisdiction) to decide this case, a clear and concise explanation of what Plaintiff believes Defendant did that was unlawful and an explanation of what laws Plaintiff believes were violated by Defendant's conduct. Plaintiff can find more information on what needs to be in a complaint in the Pro Se Handbook, which is available on the district court's website, <http://www.cand.uscourts.gov>. If Plaintiff fails to file an amended complaint that contains a short and plain statement of the claim and the basis for federal court jurisdiction, this Court will dismiss Plaintiff's Complaint with prejudice.

IV. Conclusion

Based on the analysis above, the Court RECOMMENDS that the District Court:

1. order Plaintiff to amend his in forma pauperis application to provide the source of money and amount received from each source stated in Section 2 of his application; and
2. dismiss Plaintiff's Complaint with leave to amend.

Pursuant to Federal Rule of Civil Procedure 72, any party may file objections to this Report and Recommendation with the assigned District Judge within ten days after being served with a copy.

IT IS SO ORDERED.

Dated: September 4, 2007

MARIA-ELENA JAMES
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ERIC C. GEROLD,
Plaintiff,

Case Number: CV07-04142 MEJ

v.

CERTIFICATE OF SERVICE

NOVORTIS RETALIN,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 4, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Eric C. Gerold
17 Woodford Dr
Moraga CA 94549

Dated: September 4, 2007

Richard W. Wieking, Clerk
By: Brenda Tolbert, Deputy Clerk

United States District Court
For the Northern District of California